IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1382

THE OMAHA NATIONAL BANK,

Petitioner,

vs.

NEBRASKANS FOR INDEPENDENT BANKING, INC., et al.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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STATEMENT OF THE CASE

The question before the Trial Court and the Court of Appeals was not a simple dispute over the operation of the single detached facility at 18th and Douglas Streets, Omaha, Nebraska. The question was whether or not Petitioner, Omaha National Bank, in operating a main bank plus three separate physically detached and removed facilities was in violation of Nebraska's law that restricted branch banking to the main bank and two detached facilities. (Petition for writ, App. A, 38a, 39a.)

The action was not one to enjoin the 18th and Douglas Street detached facility operation, but it was one to enjoin the operation of three detached facilities where state chartered banks could operate only two such facilities. The choice of which of the three operations should be closed to comply with Nebraska branching restrictions was left with Petitioner, Omaha National Bank. (Petition for writ, App. A, 54a.)

When Omaha National Bank moved its main bank to the Woodmen Tower building in 1970, it was operating and for some time continued to operate two near-by facilities in addition to the main bank, i. e., the "Brandeis" parking garage facility (an attached facility under Nebraska law) and the "Cupcake" facility (a detached facility approximately three blocks removed from the new main bank quarters). Such operations conformed to Nebraska laws with respect to attached and detached facilities.

In 1973 and 1974, Omaha National Bank built and opened three new detached facilities, and closed its Brandeis and Cupcake facilities. Two of the three new detached facilities were located in suburban areas of Omaha, several miles from the main banking quarters, thereby extending and enlarging the geographic competition greatly and materially. Such suburban operations are in the same banking areas where several of the plaintiff banks were and are doing business and are now in competition with plaintiffs' banks. (Petition for writ, App. A, 52a, F. N. 6.)

All three of Petitioner's new detached facilities render substantially all banking services that are offered

by bank branches and by suburban unit banks. (Petition for writ, App. A, 42a.)

There is no similarity of operation between Omaha National Bank's Brandeis facility (attached) and its new detached facility at 18th and Douglas Streets. The former was confined to a multi-drive-in facility, primarily for making deposits and cashing checks. The new 18th and Douglas Street facility (for all practical purposes) is a full bank operation.

Petitioner, Omaha National Bank, is the largest bank in the State of Nebraska, and controls approximately 31% of all of the bank deposits in the City of Omaha.

When it operates three detached facilities, and state banks are allowed only two under the Nebraska law, Petitioner has a great competitive advantage over state banks.

The competitive advantage is measured by Petitioner's total operation, not that of the single facility at 18th and Douglas Streets.

The Comptroller of the Currency made its determination ex parte with respect to the question of whether or not the 18th and Douglas Street facility was a branch. It refused an adversary hearing as directed by the Trial Court. (Petition for writ, App. A, 42a, 43a.)

The meaningful distance between the operations of the Omaha National Bank's main bank and its 18th and Douglas Street facility is not 102 feet, but is in excess of 500 feet. (Petition for writ, App. A, 53a; Fig. 1, App. A, 41a.)

REASONS FOR DENYING THE WRIT

I.

The decision of the Court of Appeals is not in conflict with the decision of the Fourth Circuit Court of Appeals in the Farmers & Merchants case.[1]

We may agree that both decisions address the same issue, i.e., whether a detached facility is or is not a "branch" under 12 U.S.C. § 36, but this is the total extent of agreement. The case at bar is wholly different and distinguishable from the *Farmers & Merchants* case under every applicable test, and in no way may it reasonably be said that the decisions are in conflict one with the other.

The court in the *Farmers & Merchants* case was careful to expressly recognize that each case must be decided on its own facts in determining what is or what is not a branch under the federal law, and in doing so employed the following language:

> "The court is well aware of the problems inherent in its refusal to adopt the simple expedient of labeling all free-standing structures as separate 'branches'. The court is comforted, however, in its knowledge that a case by case consideration will do greater justice and better comport with legislative intent and judicial sense." (Page 9, unpublished opinion of district ct.)

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1 Commonwealth of Virginia v. Farmers & Merchants National Bank, 480 F. Supp. 568 (W.D. Va. 1974), aff'd per curiam, 515 F.2d 154 (4th Cir. 1975), cert. denied, 44 U.S.L.W. 3205 (U.S. Oct. 6, 1975).

To the same effect is the holding of the appellate court in the case at bar, citing *North Davis Bank v. First National Bank*, 457 F. 2d 820, 824 (10th Cir. 1972). (Petition for writ, App. A, 43a.)

A comparison of the facts in the case at bar with the facts in *Farmers & Merchants* case readily distinguishes them and illustrates a complete absence of conflicting decisions between the two Appellate Courts.

1. The *Farmers & Merchants* case involved but one small drive-in facility. The bank had no drive-in, not a single drive-in window, and had it been able to attach such a window to its existing building it would have sufficed. But compare the Omaha National Bank's branching activities. The Omaha National Bank was not without a drive-in facility, for it had two, but closed both of them and built three new ones and greatly expanded its competitive branching by going into the suburbs with two of them. The facility in the *Farmers & Merchants* case did not go out into the far reaches of the city with other branches and did not conduct full branch or unit bank operations in its new drive-in facility.

2. In the *Farmers & Merchants* case, the court found that the Farmers & Merchants Bank made no attempt to expand in a material way the geographical region served by the branch office. The case at bar embraces a broad spectrum of multiple operations on a preconceived, deliberate and determined effort by Petitioner to expand branching activities beyond what state banks could do, and thereby obtain a highly advantageous competitive position. Petitioner expanded its competitive branch activities from its central city operations to the suburbs by

constructing, opening and operating three new, large, full service facilities, offering all services common to suburban unit banks or branches. The geographic expansion was major, and gave the Omaha National Bank great and damaging competitive advantage.

In the case at bar, the Omaha National Bank has been involved in a "clear, systematic attempt to secure branch banking privileges prohibited under the state law", a course of conduct considered and frowned upon by the United States Supreme Court in the *Dickinson* case.[2] The court, in the *Farmers & Merchants National Bank* case, in distinguishing it from the *Dickinson* case, said that the Farmers & Merchants National Bank was not so engaged. (380 F. Supp. 568, 573.)

3. In *Farmers & Merchants National Bank* case, the court said:

> ". . . The question reduces to whether a bank shall be placed at a possibly permanent competitive disadvantage in meeting the needs, preferences, and modern banking habits of its customers because of its physical location, established in most instances long before such needs are apparent." (380 F. Supp. 568, 573.)

The question in the case at bar reduces to whether the Omaha National Bank, Petitioner, shall have a formidable permanent competitive advantage over state banks by being able to operate three detached facilities whereas state banks could not do likewise, but could operate only two out of the three.

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2 **First National Bank v. Dickinson**, 396 U.S. 122, 138 (1969).

4. The operations of its three detached facilities by Omaha National Bank are substantially the same as the operations of branches or unit banks, whereas the operation of the drive-in facility by Farmers & Merchants National Bank was operated as an adjunct or annex to the existing branch office. (380 F. Supp. 568, 573.)

The Appellate Court recites the 18th and Douglas Street operations of Omaha National Bank (Petition for writ, App. A, 42a), viz:

> "The 18th and Douglas Street facility is a detached office facility with ten drive-in and six walk-in teller stations. It is a custom-built, free-standing building unattached to the main bank. There is a pneumatic tube connection between the two buildings used by the bank to transport currency and papers. The facility is separately staffed, has a separate telephone listing, offers most of the customary banking services, accepts deposits, cashes checks, makes non-commercial loans and maintains somewhat longer public hours than does the main bank. It does not offer safe deposit boxes, trust services or, according to its brief, international banking or commercial loans. Its net deposits are transported to the main bank by armored car."

It is obvious that the Omaha National Bank facility at 18th and Douglas Streets is functioning in the same way as branch banks generally function, and falls within the language of the court in *Farmers & Merchants National Bank:*

> "If a facility illegally functions as a 'branch', the intended purpose of the branch cannot vitiate the effect or otherwise justify the operation of that facility." (380 F. Supp. 568, 573.)

5. At page 11, Petition for writ, Petitioner takes issue with the Appellate Court's footnote 4, Petition for Writ, App. A, 47a, respecting the court's observations in *Farmers & Merchants National Bank* case in respect of the branching laws of the State of Virginia (saying that the "attempted distinction" between the laws of the two states "will not stand scrutiny").

Initially, we suggest that the criticism is of no meaningful significance with respect to Petitioner's contention that there is a conflict in the decisions of the Fourth and Eighth Circuit Courts of Appeal.

Additionally, however, we submit that the Appellate Court's observations are correct in all respects. In *Farmers & Merchants National Bank* case, the court said:

> "In *Dickinson, supra,* on which plaintiff heavily relies, the court considered the case of an armored car mobile service center. That facility clearly fell within the language as well as the spirit of 12 U. S. C. § 36 (f). As the Court recognized, that case involved a clear, systematic attempt to secure branch banking privileges prohibited under state law. Id. at 138. Such is not the situation in this case. Defendant erected its facility as close to its existing bank as conditions permitted. *Such drive-in facilities are permitted under state law,* and had defendant been benefited by the fortuity of having located where a drive-in window could have been physically attached to the existing office, the operation of such a facility would not have been challenged." *Commonwealth of Virginia v. Farmers & Merchants National Bank,* 480 F. Supp. 568, 573. (Emphasis ours.)

And, in the same case, the United States Court of Appeals in its per curiam opinion, 515 F. 2d 154, confirms in the following language:

> ". . .; and, applying federal law, it concluded further that the drive-in facility which was the subject of litigation was not a 'branch' but an extension of an existing banking office, the maintenance of which was authorized under both state and federal law."

6. That the court in the *Farmers & Merchants National Bank* case held the single drive-in facility not to be a "branch" under the facts before the court on a summary judgment proceeding, and that the court in the case at bar held all three detached facilities to be "branches", does not in any conceivable manner demonstrate or establish or even suggest that the decision of the case at bar by the United States Court of Appeals for the Eighth Circuit is in conflict with the decision by the United States Court of Appeals for the Fourth Circuit in *Farmers & Merchants National Bank.*

II. and III.

The decision of the Court of Appeals is not in conflict with the decision in either the Dickinson case (supra) or Walker case,[3] but is consistent with and compelled by each of them.

The Appellate Court expressly follows the rule laid down in the *Dickinson* case that the question of "what constitutes a 'branch' is a question of federal law, not controlled by state law definition," saying:

> "Under 12 U. S. C. § 36 (c) a national banking association may engage in branch banking only when, where and how state law would expressly authorize

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3 First National Bank v. Walker Bank & Trust Company, 385 U. S. 252 (1966).

a state bank to do so. *First National Bank v. Walker Bank & Trust Co.*, 385 U. S. 252, 260-62 (1966). It is established that what constitutes a 'branch' is a question of federal law, not controlled by state law definitions, *First National Bank v. Dickinson*, 396 U. S. 122, 133 (1969); *Driscoll v. Northwestern National Bank*, 484 F. 2d 173, 175 (8th Cir. 1973), but the determination must be made on the facts of each case, not according to a fixed test. *North Davis Bank v. First National Bank*, 457 F. 2d 820, 824 (10th Cir. 1972)." (Petition for Writ, App. A, 43a.)

As observed by the United States Supreme Court and the Appellate Court (Petition for Writ, App. A, 44a) the Appellate Court is called upon to construe the definition and apply it with respect to specific facts in the case. In doing so, the Appellate Court quoted, relied upon, and followed the guidelines laid down by the U. S. Supreme Court in both the *Walker* and *Dickinson* cases, viz.:

> "The Supreme Court has held that in applying the statutory definition of 'branch,' equal recognition must be extended to the policy of maintaining 'competitive equality' between the state and national banking systems insofar as branch banking is concerned. The preservation of competitive equality is the pervasive underlying principle of the McFadden Act. *First National Bank v. Walker Bank & Truct Co., supra* at 261. In this light, Chief Justice Burger has observed for the court that:
>
> > "[W]hile Congress has absolute authority over national banks, the federal statute has incorporated by reference the limitations which state law places on branch banking activities by state banks. Congress has deliberately settled upon a policy intended to foster 'competitive equality.' * * * State law has been utilized by Congress to provide certain guidelines to implement its legislative policy.
> >
> > * * *

> > "The mechanism of referring to state law is simply one designed to implement that congressional intent and build into the federal statute a self-executing provision to accommodate to changes in state regulation.
> >
> > * * *
> >
> > "In short, the definition of 'branch' in § 36 (f) must not be given a restrictive meaning which would frustrate the congressional intent this Court found to be plain in *Walker Bank, supra.*" (Citations and footnote omitted.)

First National Bank v. Dickinson, supra at 131, 133, 134.

If the McFadden Act (12 U. S. C. 36) is to have any meaning, it must not be construed so as to "frustrate the Congressional intent" which gave rise to the federal enactment.

To apply the principle of "competitive equality", the court must know and consider what a state chartered bank may do under a given set of facts and circumstances and pursuant to the state's branching laws.

Petitioner's Reason II for granting the writ (Petition for Writ, 12) is misleading in that it suggests that the Appellate Court assigns state law and regulations an "indispensable" role in *determining* whether a facility is a branch, and then endeavors to support the reason by lifting only a few lines of the Appellate Court's opinion (Petition for Writ, 13).

To avoid an erroneous conclusion by reading a few lines out of context, we quote from the opinion of the Appellate Court (Petition for Writ, App. A, 49a, 50a):

"We have no quarrel with the use of such factors as an aid to the factfinder in analyzing the circumstances of a particular case, provided they do not overshadow application of the statutory definition of 'branch' and the principle of competitive equality. However, in the instant case Omaha National, the Comptroller and the District Court have lost sight of the Supreme Court's definition of 'branch bank' in *First National Bank v. Dickinson, supra* at 135, and disregarded the indispensible [*sic*] role state law must play in applying the federal definition of 'branch' in order to maintain competitive equality. By force of the language of § 36 (c) itself, the fact that a state bank would not be permitted to operate the challenged facility in addition to its other existing facilities, must take precedence as a decision criterion over the many administratively and judicially conceived factors discussed above. *See First National Bank v. Dickinson, supra; First National Bank v. Walker Bank & Trust Co., supra; Driscoll v. Northwestern National Bank, supra.*"

The Appellate Court did *not* "assign state laws and regulations an 'indispensable' role in *determining* whether a facility of a national bank is a 'branch'," but correctly observed that, in order to maintain competitive equality, state law may not be disregarded in *applying* the federal definition of "branch".

There is no way to measure "competitive equality" and give effect to the doctrine of competitive equality mandated by the United States Supreme Court in the *Walker* and *Dickinson* cases, except by recognizing what state chartered banks may do under like circumstances. *What a state chartered bank may do is determined by*

the laws and regulations of the state, and to that extent, the laws and regulations have an "indispensable" place.

It is submitted that the following excerpt from the Appellate Court's opinion (Petition for Writ, App. A, 46a, 47a, 48a) is correct under and consistent with the holdings of the U. S. Supreme Court under the *Walker* and *Dickinson* cases:

> "The language of § 36 (c) makes clear that Congress intended to allow state law to determine whether branch banking by a national bank in a given state will be permitted and, if so, the limits on branch units. While the language is somewhat ambiguous concerning the extent to which state law should be used to *define* branch banking, the Supreme Court's recognition of Congress' paramount policy of fostering competitive equality in the McFadden Act mandates that, in determining whether a national bank facility is a branch, prime consideration must be given to whether a state bank would be allowed to maintain one like it in the circumstances. If the state branch would be prohibited, the facts calling for classification of the national bank facility as a mere 'extension of the main bank,' and not a branch, must be obvious and compelling to avoid what the Supreme Court condemned as restrictively applying the definition of 'branch' in a manner frustrating congressional intent. *First National Bank v. Dickinson, supra* at 134.
>
> "The District Court did not conclude whether in its view a state bank would be permitted to operate similar facilities in the same circumstances as Omaha National's; but our reading of the Nebraska statute and regulations make it abundantly clear that a state bank would not be permitted to do so, and that the instant facility, on the facts the District Court found to exist, is a 'branch' under federal law."

IV.

The decision of the Court of Appeals, along with the decisions of the Supreme Court in the Walker and Dickinson cases, clearly points the direction and enunciates clear and workable guidelines for the Comptroller of the Currency for national banks and State Bank Administrators for state banks to follow and will perpetuate, not destroy, the dual system of banking, the preservation of which was at the root of the McFadden Act.

The undisputed fact in the case at bar is that the Omaha National Bank is operating three detached facilities under circumstances where a state chartered bank can operate only two (Petition for writ, App. A, 50a); and also that all three function as branches or unit banks. To permit this unequal treatment between a national and state bank would be to render the McFadden Act meaningless. The congressional intent to assure competitive equality certainly would be thwarted and frustrated in contravention of the McFadden Act and the rules laid down in both the *Walker* and *Dickinson* cases.

The competitive edge to national banks flowing therefrom would not only damage but would destroy the dual system of banking which was sought to be protected by the McFadden Act.

The decision of the Appellate Court in the case at bar recognizes and follows the fundamental doctrines laid down by the U. S. Supreme Court in the *Walker* and *Dickinson* cases and articulates the questions and guidelines with meaningful clarity.

The decision of the Appellate Court in the case at bar, along with the decisions of the U. S. Supreme Court in the *Walker* and *Dickinson* cases, point the direction and chart the course for national and state bank administrators, and will be most helpful and useful guidelines to the banking industry.

There is no argument that the threshold question of whether a facility of a national bank is a "branch" must be decided under federal law. The rule was clearly laid down by the United States Supreme Court, Chief Justice Burger, in the *Dickinson* case. The Appellate Court in the case at bar just as clearly recognized the rule and followed it without deviation.

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CONCLUSION

The Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit should be denied.

Respectfully submitted,

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Because it attempts to inject a new issue into this application for review—the totality of Petitioner's banking operations in the city of Omaha—Respondents' brief requires a reply.

The expansion of Petitioner's banking operations in Omaha between 1969 and 1974 can be properly understood only in the context of the changes in Nebraska's branch banking laws during the same period. Respondents have failed to supply the Court with this context, and their argument is therefore misleading.

In 1969 and for several years prior thereto, Nebraska branch banking law permitted a bank to have, in addition to its main bank, one attached facility and one detached facility, provided that the detached facility was within 2600 feet of the main bank. Sec. 8-157, Neb. Rev. Stat. (1963 Supp.), App. C, *infra*, p. 1c. In that statutory setting, Petitioner operated its main bank in the Omaha Building at 17th and Farnam Streets; the Brandeis facility across the street from the main bank, at 17th and Douglas Streets; and the so-called "Cupcake" facility, a branch bank three or four blocks distant from the main bank, but within the 2600 foot limit.

As stated in the Petition (p. 6), the Brandeis facility was in exactly the same geographical relationship to the main bank in 1969 as the contested 18th and Douglas facility is to Petitioner's present main bank in Woodmen Tower (Petition, Fig. 1, p. 5), and no claim was ever made that the Brandeis facility was a branch bank.

Contrary to the statements contained in Respondents' brief, no meaningful distinction can be made between the Brandeis and the 18th and Douglas facilities, in terms of their functional relationship to Petitioner's main bank. The trial record shows that for many years the Brandeis facility had walk-in facilities (later voluntarily closed by Petitioner), as does the 18th and Douglas facility. The Brandeis facility also had five drive-in units, whereas the 18th and Douglas facility has ten.

Petitioner's relocation of its main bank in Woodmen Tower in 1970 had the entirely coincidental effect of bringing the main bank into closer proximity to the Brandeis facility.

In 1973, the Nebraska Legislature amended the branch banking law in two respects material to this case. First, it increased from one to two the number of permissible detached facilities. Second, it liberalized the distance limitations upon detached facilities, by permitting one to be located within three miles of the main bank, and the other at any location (without distance restriction) within the city limits. Legislative Bill 312, Neb. Legislature, 1973 Session; App. D, *infra*, p. 1d.

Like most other Omaha banks, Petitioner took prompt advantage of the liberalized branch banking law to move into new marketing areas from which previously it had been excluded. It closed the "Cupcake" branch (which of necessity had been located in downtown Omaha, because of the 2600 foot limitation in the prior law), and opened two new branches in suburban Omaha, one within three miles of the main bank and the other at a greater distance but within the city limits.

The parties have agreed from the inception of this case that both of Petitioner's new suburban facilities were branch banks. Notwithstanding Respondents' assertions to the contrary, therefore, the only issue in this case is whether Petitioner's 18th and Douglas facility is a branch. Petitioner's size, and the competitive effect of its new branches in suburban Omaha, are completely irrelevant.

Further, it should be noted that the 1973 amendment made absolutely no change in the statutory definition of an attached facility. Cf. App. C, p. 1c, and App. D, p. 1d. During the many years that the Brandeis facility was in operation while Petitioner's main bank was in its former location in the Omaha Building, the Brandeis

facility was never challenged as an illegal branch under the prior law. Petitioner's new main bank in Woodmen Tower and its new walk-in/drive-in facility at 18th and Douglas are in precisely the same geographical relationship. The 1973 Nebraska law defining an attached facility is precisely the same as the prior law.

It should also be pointed out that the net effect of the changes in Petitioner's downtown banking facilities from 1969 to the present has been to decrease, rather than increase, both their number and the geographic region occupied by them. Prior to 1973, Petitioner had one more office in downtown Omaha than it has now, and its offices were dispersed over a three or four block area, whereas now they are across the street from each other. Petitioner's new competitive presence in suburban Omaha, which is really the gravamen of Respondents' complaint in this case, occurs only as a result of the new opportunities presented by the 1973 amendments to the Nebraska branch banking law. It is the clearly predictable and intended result of those amendments. Identical opportunities were, and are, available to Respondents and all other banks in Nebraska.

Placed in the context of the foregoing facts, all of which are uncontroverted in the record, Respondents' attempts to distinguish the case at bar and the *Farmers & Merchants* case are deceptive and of no probative value whatsoever.

Respondents' argument that the Court of Appeals referred to Nebraska law in "applying" the federal definition of a branch bank but not in "determining" the federal definition, is merely a meaningless exercise in verbal

gymnastics. A careful reading of the majority opinion renders it clear that its practical effect is to utilize state law definitions to redefine the term "branch", which is in direct contravention of this Court's holding in the *Dickinson* case.

The foregoing context also helps to explain Respondents' misunderstanding of the meaning and application of the doctrine of competitive equality, as announced by this Court in the *Walker Bank* case, which error was embraced by the Court of Appeals in its majority opinion.

To resolve the conflict between the Fourth and Eighth Circuit Courts of Appeals, and to correct the Court of Appeals' misinterpretation and misapplication of this Court's decisions in the *Dickinson* and *Walker Bank* cases, a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX C

8-157. Branch banks prohibited; auxiliary teller offices authorized; clearing house transactions not prohibited. (1) No bank shall maintain any branch bank and, except as provided in subsection (2) of this section, the general business of every bank shall be transacted at the place of business specified in its charter.

(2) With the approval of the director, (a) any bank may maintain an attached auxiliary teller office, and (b) any bank may, or two or more such banks may jointly, establish and maintain not more than one detached auxiliary teller office, to be used as a motor vehicle and walk-up off-street banking facility, such office to be within the same corporate limits and within two thousand six hundred feet of the premises specified as its place of business in its charter, but not within three hundred feet of another nonparticipating bank or within fifty feet of another auxiliary teller office. The services of such auxiliary teller office whether attached to or detached from the bank shall be limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank.

(3) Nothing in this section shall prohibit ordinary clearing house transactions between banks.

Source: Laws 1927, c. 33, § 1, p. 153; C. S. 1929, § 8-1,118; R. S. 1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R. R. S. 1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158.

APPENDIX D

LEGISLATIVE BILL 312

Passed over the Governor's veto May 17, 1973

AN ACT to amend section 8-157, Reissue Revised Statutes of Nebraska, 1943, relating to banks; to permit not more than two detached auxiliary teller offices as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska.

Section 1. That section 8-157, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank and, except as provided in subsection (2) of this section, the general business of every bank shall be transacted at the place of business specified in its charter.

(2) With the approval of the director, (a) any bank may maintain an attached auxiliary teller office, and (b) any bank may (, or two or more such banks may jointly,) establish and maintain not more than (one) *two* detached auxiliary teller (office) *offices,* to be used as a motor vehicle and walkup off-street banking (facility) *facilities,* such (office) *offices* to be within the (same) corporate limits (and) *of the city in which such bank is located. Any bank that establishes and maintains two auxiliary teller offices shall locate one of such offices* within (two thousand six hundred feet) *three miles* of the premises specified as its place of business in its charter. *Neither shall be located* (, but not) within three hundred feet of another nonparticipating bank or within

fifty feet of another auxiliary teller office. The services of such auxiliary teller (office) *offices* whether attached to or detached from the bank shall be limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank.

(3) Nothing in this section shall prohibit ordinary clearing house transactions between banks.

Sec. 2. That original section 8-157, Reissue Revised Statutes of Nebraska, 1943, is repealed.

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* Printers Note: Bracketed words were lined through in original Legislative Bill.